

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Application of Teleport)
Communications Group, Inc.,)
and AT&T Corp.'s Application) CC 98-24
Pursuant to 47 USC §§ 214,)
and 310(d) for Approval of)
Transfer of Control)

KEITH MAYDAK'S PETITION TO DENY

To the Commission:

1. The Petitioner is Keith Maydak ("Maydak"), an individual, whose address is 613 Cross Street; E. McKeesport, PA 15035.

2. AT&T Corp. seeks to acquire the licenses and authorities belonging to Teleport Communications Group, Inc. ("Teleport").

3. AT&T Corp. and Teleport argue that such a transfer would be in the public interest because it would permit AT&T to compete more vigorously in the local exchange marketplace and the consumer international marketplace.

4. While Maydak does not dispute the end results which AT&T asserts, he submits that such would not be in the public interest.

5. On the contrary, such would interfere with other carriers' ability to compete and would harm consumers including Petitioner.

6. Initially, the transfer would allow AT&T to become the largest competitive local exchange carrier while retaining the largest interstate telecommunications message service customer base. In addition, AT&T would be the largest internet service provider and the dominant wireless provider.

7. AT&T currently attempts to use its marketing clout to eliminate competition. Specifically, AT&T:

- a. Encourages term commitment agreements for long periods of time despite being aware that marketplace conditions are evolving which would make the offering adverse to the customer;

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- b. Uses promotional offerings to cajole customers to switch to AT&T without notifying the users that it plans to increase rates via tariff filings with only a de minimis notification to the customer of the rate change (e.g. 1.5" x 2" advertisement in the classified section of the USA Today in contrast with full page ads touting the alleged discounts;
- c. Required tying arrangements which are violative of the Sherman and Clayton Antitrust Acts, 15 USC § 1, et seq. (e.g. AT&T's requirement that a 700-number subscriber retain AT&T as its main 1+ carrier in order for the customer to keep the 700-number);
- d. Misrepresentations as to rates (e.g. its entire True-Voice campaign misrepresented its service offerings and AT&T's campaign regarding "no-name" operator service providers which defamed the entire industry and scared customers from using smaller carriers);
- e. Slamming (i.e. thousands of Informal Complaints have been filed against AT&T in the last two years alleging slamming. It is unreasonable to believe that a slammed consumer would take additional actions against AT&T other than the informal process because of the high costs of filing a formal complaint);
- f. Tariff swaps (e.g. a consumer switches to AT&T believing they would receive a certain plan only to be billed at a higher rate under a separate tariff provision);
- g. Discriminatory rates (e.g. AT&T literally hides favorable rate plans from consumers until they threaten to switch carriers. At the point of notification, AT&T offers a lower rate under the guise of "We want you back." Such schemes are violative of 47 USC 201).

8. It is clear that a merger between Teleport and AT&T would encourage similar conduct.

9. It can be reasonably expected that AT&T would tie its Teleport CLEC offerings with its 1+ interstate service.

10. More important, AT&T would continue its deceptive practice of encouraging term contracts.

economic clout to reduce its obligations for reciprocal obligations. In fact, AT&T recently strong armed the Philippines national carrier to accept less than what was owed under the agreements in place. AT&T has similarly threatened to stop paying Telmex. Also, AT&T often, without prior Commission authority, refuses to pay filed rates as it did with Total Telecom.

12. In addition, the merger would create a clearly dominant carrier and would require AT&T to be reclassified as such.

13. Therefore, the requests should be denied.

14. If the Commission is of the opinion that the requests should not be denied in full, the following conditions must be imposed to protect the public and competition:

- a. AT&T should be reclassified as a dominant carrier;
- b. All existing term contracts must be voidable upon request. In addition, AT&T must be required to notify all persons who entered a term agreement that it is voidable at any time;
- c. AT&T must eliminate all tying arrangement similar to its EasyReach 700-service arrangement which is tied to its 1+ service (AT&T will disconnect the 700-number if PIC service is switched to another carrier. AT&T usually given a fourteen (14) day notice to switch back). More importantly, AT&T must pledge not to tie any of its Teleport products with interstate services whether by tariff or side agreement;
- d. AT&T must agree not to change promotional rates until six (6) months after the last consumer signed up to the discount plan;
- e. AT&T must not use discriminatory pricing schemes for similar services (i.e. offering one customer service at \$.10 per minute while charging a customer that makes the same amounts of calls \$.23 per minute for the same transport in violation of 47 USC 201);
- f. AT&T must agree to a streamlined process to resolve slamming issues and reimburse all slammed consumers the difference between the slammed rate and the rate the consumer would have paid the chosen carrier;

- g. AT&T must not misrepresent its rates or use advertising methods which confuse potential customers (e.g. not advertise 1-800-CALL-ATT as being without a surcharge while notifying consumers in small print that the waiver of surcharge requires advance signing up despite the dichotomy being discriminatory and in violation of 47 USC 201);
- h. AT&T must not engage in tariff swapping. That is, if a consumer calls AT&T to sign up for a \$.10 per minute plan, AT&T must not bill at higher rates than promised (abuse of filed rate doctrine);
- i. AT&T must notify all consumers by mail upon a change in the rates affecting the consumer and not place tiny confusing ads in newspapers.

15. Without such precautions, the merger should not be allowed in any manner.

16. AT&T's assertions regarding the increased benefits of its offerings is self-serving. Nothing alleged by AT&T is in the public interest.

17. Rather, the offerings will allow AT&T to remonopolize the marketplace.

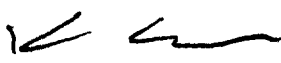
18. Until the Regional Bell Operating Companies are allowed to enter the market, the merger should not be allowed.

19. The present state of the market, with only a small number of large players, would not withstand AT&T's being the largest Competitive Local Exchange Carrier while being the largest interstate carrier, internet provider, and wireless provider.

WHEREFORE, Keith Maydak demands that the Commission deny AT&T's application for authority to receive Teleport Communications Group, Inc.'s licenses and tariffs. Or, in the alternative, that the aforementioned conditions be imposed.

Respectfully submitted,

By:



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DECLARATION OF KEITH MAYDAK

I, Keith Maydak, decare and state under the penalty for perjury that the following is true and correct to the best of my knowledge, information, and belief (28 USC 1746):

1. My name is Keith Maydak. I am making this declaration based upon personal knowledge of AT&T Corp.'s activities. I have learned this information through lengthy and complete studies of AT&T's service offerings and conduct in the matters discussed and other business activities of AT&T.

2. I believe that I will be harmed if the applications filed by AT&T and Teleport Communications Group, Inc., are granted. Specifically, I believe that service offerings and competition will be limited if the applications are granted and as a proximate result, I will not have as many options available to me. As a consumer and a businessperson, with miscellaneous business interests, any change in the telecommunications infrastructure has a direct affect on me. Indeed, I subscribe to telecommunications offerings and will be affected by the pricing and availability of competitive services.

3. I do not believe that the merger of AT&T and Teleport is in the public interest for the reasons outlined in my Petition and below, among other reasons.

4. I have reviewed AT&T's tariff information for EasyReach 700-service. In addition, I have previously reviewed AT&T's promotional literature for EasyReach 700-service. A review of this information shows that AT&T will issue a 700-number to any person who is also a subscriber to AT&T as a Primary Interexchange Carrier (PIC). I note that once a person receives an AT&T EasyReach 700-number (which is similar to an 800-number but a customer has the choice of making the call toll free or having the calling party pay for the transport), they must continue to have AT&T as this PIC, or AT&T sends a notice giving a time period to switch back or face discontinuation of the EasyReach service. Because a person may preprint stationary, business cards, or simply distribute the EasyReach 700-number on a large scale, disconnecting the service would create a burden. Thus, a consumer or business may not wish to lose the 700-number, but may wish to choose a lower priced PIC. Yet, there is no technical barrier which prevents AT&T from offering the 700-number to persons who use other interexchange carriers. On the contrary, AT&T has simply tied the service offering with its 1+ PIC services. This is

a per se illegal tying arrangement in violation of the Sherman and Clayton Antitrust statutes found at Title 15, U.S.C. §§ 1, et seq.

5. I believe that AT&T and Teleport will seek to tie its offerings also. Thus, the same form of impediment to competition will occur. Therefore, if the application for authority to transfer is granted, it should be conditioned on a certification that all tying arrangements contained in AT&T's and Teleport's tariffs will be eliminated and that no tying of any services shall occur in the future.

6. I have reviewed most of AT&T's primary advertising campaigns over the last five (5) years. I noticed that AT&T makes specific rate promises and asserts that certain discounts will apply when a person signs up for AT&T's PIC services and then chooses a service plan. I also review AT&T's notices which contain rate changes. In these notices, of which are usually in various newspapers and are only about 1½"x1½" in size, AT&T increases the rates for persons and businesses on the plans in contravention of the rates promised in the advertising. While this is legal under the filed rate doctrine (but see CC 96-61 requiring detariffing), it is unethical and misleading.

6a. What AT&T seems to be doing is offering a promotion by making promises of certain rates only to dupe persons into signing up for AT&T. Once the promotion becomes stale, AT&T begins another promotion targeting other carriers and offering different plans for similar services, but at discounts. In the mean time, AT&T quietly raises the rates for the customers who have already signed on.

6b. AT&T does not notify the customers who have signed up to the plan that it raised the rates other than through the tiny ads. In contrast, its advertising budget for signing new customers up exceeds \$300,000,000.00 per year.

6c. This information can be verified by taking notice of AT&T's constant rate changes for pre-existing services, of which consist mostly of increases.

6d. This type of behavior, which includes offering similar services to similarly situated customers, is discriminatory and unlawful pursuant to 47 USC 201. A customer that chooses AT&T for its PIC that spends \$100.00 per month on long distance should be charged the same as any other customer who spends the same for the same type of calls. Yet, AT&T's rates fluctuate between about 10¢ per minute to 30¢ per minute simply because one customer signed up under a promotion while AT&T has increased the prices for the plan used by the latter customer.

6e. In the event that the AT&T/Teleport merger is approved, of which I do not feel would be in the public interest, strict conditions to eliminate the present dichotomy in rate structures.

6f. Furthermore, AT&T should be required to give actual notice of rate changes to customers as it is impractical for consumers to review AT&T's tariff filings on a consistent basis.

7. Another scheme AT&T consistently engages in is offering consumers a higher rate than the best available for the same type of calls. For instance, a person calling AT&T at 1-800-222-0300 or 1-800-878-3288 may be offered a flat rate of 15¢ per minute, or similar structure. If the customer balks, AT&T sometimes offers lower plans, such as those at 10¢ per minute. This is another example of AT&T's using discriminatory rate structures in violation of 47 USC 201.

7a. I have listened while other persons have negotiated rates with AT&T and this has occurred. A person that calls AT&T and simply asks to switch over to AT&T will never be offered the best available rate.

7c. This information can be readily seen by reviewing AT&T's F.C.C. Tariff No. 1 which shows similar services being offered at a wide range of rates. This conduct may make sense from a marketing point of view, but is exactly what Congress had in mind in eliminating through 47 USC 201.

8. AT&T is also engaged in frequent slamming. Literally thousands of informal complaints are pending against AT&T before this Commission because AT&T has slammed customers. Because of the Commission's high filing fee, it is unreasonable to think that consumers would prosecute AT&T through the formal complaint process. Indeed, the New York Public Service Commission has recently announced that it is in the process of taking action against AT&T because of its slamming practices.

8a. I have been the victim of being slammed by AT&T numerous times. As a result, I received invoices for telephone calls in excess of \$.23 per minute while my carrier only charged \$.11 per minute.

8b. If AT&T were able to merge with Teleport, it can be expected that additional slamming will occur. Therefore, AT&T should be required to set up a streamlined process of reimbursing those damaged by its slamming activities prior to any transfer of authority.

9. Another practice which has been engaged in by AT&T is tariff swapping. Pursuant to this scheme, AT&T advertises a rate plan on television. When the consumer calls to sign up for the plan, AT&T representatives do not sign the person up to the promised rate but to a separate tariffed rate. Therefore, the consumers do not receive the discounts promised. However, when a complaint is made, AT&T claims that it is required by 47 USC 203 to collect the tariffed rate, ignoring the fact that it offered the same service at a discount through a different tariff section.

9a. AT&T should be required to cease such behavior if the merger is allowed.

10. AT&T also misrepresents other carriers' rates. For instance, AT&T's media campaigns have frequently made references to "no-name" carriers which charge high rates. As a proximate result, many consumers have become wary of all smaller carriers even those with superior rate structures. While consumers should be aware of the rates they are paying, AT&T's conduct is giving the entire telecommunications industry a bad name.

11. AT&T also attempts to cajole minor children into using AT&T's services unnecessarily. For instance, a recent AT&T advertising campaign for 1-800-CALL-ATT explained that customers using the service could win a "mountain bike" or "backpack." The announcer was clearly a teen-age boy. Furthermore, AT&T then stated that the contest was open to those 13 and older.

11a. The entire promotion focused solely on the contest and not the service offering, and it was clearly targeted toward children around 13-16 years old. In fact, the ads were run on radio shows such as the Open House Party.

11b. This type of activity must stop. It is not in the public interest for AT&T to target persons not authorized or sophisticated enough to choose a carrier in a rational manner.

11c. If AT&T merges with Teleport, it is clear that such "contests" will continue. It should be a condition that AT&T not target minor children in its advertising should the Commission choose to grant AT&T the requested authority.

12. Another scary tactic of AT&T is to violate reciprocal payment agreements. Instead of using administrative matters and petitions to negotiate better rate deals, AT&T often uses its economic clout to force changes.

12a. AT&T has admitted to refusing to pay the Philippines national carrier the amounts due it. In fact, AT&T strong armed a reduction in the debt it owed, in addition to lower prices in the future. While the rates may have been too high, it was an improper tactic to cease paying to extort a lower rate. On the contrary, a proper proceeding should have been initiated with the regulatory bodies involved, or through negotiations. Certainly, when revenues are stopped, the other carrier is at a significant disadvantage.

12b. The Times Mirror London Edition recently reported that AT&T was up to the same tricks with Telmex. Regardless of the veracity of the article, such conduct should not take place.

12c. AT&T similarly did this with Total Telecom. Specifically, AT&T transported calls to Total's network and then refused to pay the tariffed transport rates ignoring the filed rate doctrine. Eventually, the matter was resolved by this Commission. However, AT&T should not have withheld the funds due under the tariffs, which are assumed to be lawful, until it received permission from the Commission to alter the payments.

12d. It should be a condition of the merger that AT&T and Teleport will not default on charges due under tariffs or reciprocal obligations until first receiving permission from this Commission or another regulatory body.

12e. The failure to cause AT&T to desist from this type of conduct could result in disruptions in consumers' services. For instance, if AT&T refuses to pay Telmex, or another carrier, that carrier could legitimately stop incoming traffic sparking a telecom war of which the only persons harmed will be those this Commission is entrusted to protect, i.e., the public.

13. AT&T and Teleport also encourage term agreements. It is well established that such agreements are contrary to the public interest and are often unintelligently entered into.

13a. AT&T should be required to make the contract voidable upon the completion of the merger, i.e., a person could request to void the term agreement and switch to a lower priced carrier.

13b. Furthermore, AT&T should be required to notify all those who have a term contract with Teleport or AT&T that the contract is voidable on request.


14. I believe that these safeguards and the ones listed in ¶¶14(a)-(i) of my Petition will address these problems with AT&T's conduct.

15. I note, however, that the merger would not be in the public interest because it would create an entity which would be the largest interexchange carrier, internet service provider, cellular (wireless) carrier, and competitive local exchange carrier.

16. Clearly, the merger would make AT&T a dominant carrier, as described in the Commission's opinions and rules. Therefore, any merger should be contingent upon AT&T being reclassified as a dominant carrier, or denied altogether.

This 12th day of March, 1998.

By:



Keith Maydak